

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.310 of 1999

Decided on: 4.12.2009

Smt.Santi

.....Appellant

VERSUS

Bhagat Ram and others

.....Respondents.

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?No

For the appellant: Mr.N.K.Thakur, Advocate.

For the respondents: None

Deepak Gupta,Judge (Oral)

This Regular Second Appeal was admitted on the following substantial questions of law:-

- “1. Whether the custom can be proved without tendering any document in its support to dis-entitle the widow from inheritance of her husband estate?
2. Whether the suit can be said to be within time which is admittedly filed after 23 years of the sanction of mutation?

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3. Whether admission made by a party to the lis is binding on him.
4. What is the effect of mis-interpretation and mis-construction of the documents Exts.D.1 to D.3 which are the copies of mutation?
5. Whether the impugned judgment and decree is vitiated for mis-reading and mis-interpretation of oral as well as documentary evidence?

The undisputed facts of the case are that Smt.Santi was married to Tikhna Ram who was the real brother of Puran Chand, the original plaintiff who died during the pendency of the suit. It is also not disputed that the parties are 'Gaddis' which is a scheduled tribe within the meaning of Clause 25 of Article 366 of the Constitution of India. In view of Section 2(2) of the Hindu Succession Act since the parties are members of a scheduled tribe, the provisions of the said Act are not applicable to them. They are admittedly governed by their own customs and if they have any specific custom that will override the provisions of the said Act.

The plaintiff Puran Chand filed a suit against Smt.Santi claiming possession of the suit land. According to him, Santi was married to his

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brother Tikhna Ram who died in the year 1967. According to the plaintiff, his widow, i.e., defendant Santi re-married one Guman Singh in the year 1974. The plaintiff alleged that the estate of Sh.Tikhna Ram which was inherited by the defendant Santi was to revert back to the brother of the deceased Tikhna Ram since as per the custom prevalent amongst the Gaddis, the widow on re-marriage loses her right in the property inherited from her previous husband and this property reverts to the legal heirs of the previous husband.

This suit was filed in the year 1990. In the plaint, it was alleged that Tikhna had died 23 years earlier and that after his death mutation of inheritance of his property was attested in favour of Smt.Sanit. It was also pleaded that Santi had re-married Guman Singh 16 years earlier. According to the plaintiff, the suit was within limitation since only a few days prior to the filing of the suit, Santi had gifted a portion of the suit land.

The learned Trial Court dismissed the suit on the ground that custom had not been proved and the suit was not within limitation. The learned

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Lower Appellate Court held that the custom had been proved and also held that Santi had never claimed to be in adverse possession of the suit land and, therefore, the suit was within limitation. According to it, the suit based on title could not have been defeated only on the ground of limitation.

As far as custom is concerned, the learned District Judge has relied upon several judgments passed by the Civil Courts wherein it has been held that such a custom whereby a widow loses her right in the property of her previous husband on re-marriage has been established. No judgments taking a contrary view have been brought to my notice. Custom can be proved in many ways. It can be proved by leading evidence of the instances of the custom. It can be proved from the record of rights. A custom can also be proved by showing that such a custom has already been accepted in judicial decisions. This was done in the present case. Therefore, I decide question No.1 against the appellant since this custom has been proved on the basis of judicial decisions.

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However, coming to question No.2, the approach of the learned Lower Appellate Court is not correct. Even as per the pleadings, Tikhna had died 23 years earlier and after his death, mutation regarding his property was attested in favour of his widow-present appellant Santi Devi. She had a right to inherit the property under the custom.

In the plaint itself, it was alleged that Santi re-married Guman Singh 16 years prior to the filing of the suit. Even in his statement, PW/1 the plaintiff clearly stated that Tikhna died 23 years prior to the filing of the suit and Santi remarried Guman Singh about 20 years earlier which would correspond to 16 years prior to the filing of the suit since his statement was recorded in the year 1994 and the suit was filed in the year 1990. It is also not disputed that the plaintiff has never been in possession of the suit land. Since the death of Tikhna, it is Santi who is in possession of the suit land. It is true that Santi has not claimed adverse possession but she has denied the custom and stated that she has inherited the land from her husband Tikhna and, therefore, in that sense, she is

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claiming to be owner in possession of the suit land. The suit was filed by Puran Chand, predecessor-in-interest of respondents No.1 to 3 on the ground that under the custom, Santi forsook her right to the property of Tikhna on her re-marriage. Therefore, the cause of action arose in favour of the plaintiff 16 years prior to the filing of the suit when she got re-married to Guman Singh. Even if it is held that the plaintiff had a right to claim possession of the suit land, the right accrued on the date of the marriage, i.e., in the year 1974. The suit was admittedly filed in the year 1990, 16 years later. One of the reliefs claimed in the suit is a decree for declaration that Santi had no right in the suit land after her re-marriage with Guman Singh. This portion of the suit would be governed by Article 58 of the Limitation Act and under which the limitation is only 3 years. Even if the suit is treated to be a suit for possession based on title then also the limitation would start right from the date of the re-marriage of Santi with Guman Singh and the limitation would only be 12 years. The possession of Santi after her remarriage with Guman Singh was definitely

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adverse to that of the original plaintiff. A right to obtain possession accrued to him on the date of re-marriage of Santi with Guman Singh. It is not the case of the plaintiff that he permitted Santi to remain in possession of the suit land under any capacity. She was not holding the land under any licence. Therefore, her continued possession after her second marriage with Guman Singh was definitely adverse to that of the plaintiff and as such the suit was not within limitation. Substantial question No.2 is decided in favour of the appellant and against the respondent-plaintiff.

There is no need to decide questions No.3, 4 and 5 which are basically questions of fact and not of law.

In view of the above discussion, the appeal is allowed and it is held that the suit filed by the plaintiff was not within limitation and the same is accordingly dismissed. No order as to costs.

December 4, 2009
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(Deepak Gupta)
Judge

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